

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ALVIN ROYBAL, JERRY B. SANCHEZ,
and ANSELMO SMITH,

Plaintiffs,

vs.

Civ. No. 13-0025 KG/KBM

CITY OF ALBUQUERQUE,
RICHARD J. BERRY, Mayor,
ROBERT PERRY, Chief Administrative Officer,
VINCENT YERMAL, Director of Human Resources,
MARY SCOTT, Dep. Dir. Human Resources,
BRUCE RIZZIERI, Transit Department Director,
CITY LABOR-MANAGEMENT RELATIONS BOARD,
PAUL I. FORNEY, Attorney,

Defendants.

ORDER

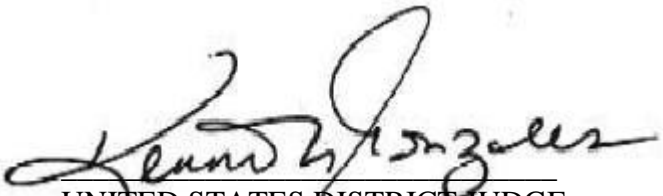
This matter comes before the Court upon Defendants City of Albuquerque, Richard J. Berry, Robert Perry, Vincent Yermal, and Bruce Rizzieri's (collectively, City Defendants) Motion to Strike Answer to Counterclaim and Memorandum in Support Thereof (Motion to Strike), filed on April 4, 2013. (Doc. 44). City Defendants move to strike Plaintiffs' Reply to City Defendants' Counterclaims (Reply), filed on April 2, 2013, because the Reply is untimely under Fed. R. Civ. P. 12(a)(1)(B), and because Plaintiffs filed the Reply after the City Defendants moved the Clerk of the Court to enter a default on the counterclaims. *See* (Docs. 42 and 43). Plaintiffs have not responded to the Motion to Strike. *See* (Doc. 46).

Under D.N.M. LR-Cv 7.1(b), "[t]he failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the

motion.” Plaintiffs failure to respond to the Motion to Strike, therefore, constitutes consent to grant that motion. Accordingly, the Court will grant the Motion to Strike.

IT IS ORDERED that

1. the Motion to Strike Answer to Counterclaim and Memorandum in Support Thereof (Doc. 44) is granted; and
2. Plaintiffs’ Reply to City Defendants’ Counterclaims (Doc. 43) is stricken.



UNITED STATES DISTRICT JUDGE